



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-193**
Inbound and outbound interstate sales of tangible personal property

Date last adopted: **January 1, 1992**

Reviewer: **JoAnne Gordon**

Date review completed: **October 31, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). YES ☐ NO ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document:

WAC 458-20-193 discusses the application of retail sales tax and business and occupation (B&O) tax to inbound and outbound sales of tangible personal. With respect to outbound sales, the rule explains the application of the retail sales tax and/or B&O tax exemptions for interstate sales, sales to persons in noncontiguous states, and sales to qualified nonresidents. With respect to inbound sales, WAC 458-20-193 explains when persons outside this state establish nexus and are subject to the B&O tax and the requirement to collect retail sales tax. It also explains when an out-of-state seller must collect the state's use tax.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of



	Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)
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Please explain.

This rule explains taxpayers' tax-reporting responsibilities when making inbound and/or outbound sales of tangible personal property. The Department should evaluate its positions with respect to delivery and receipt, and disassociation to ensure these instructions reflect current case law in this area.

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
X		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Information from the following documents should be incorporated into Rule 193 (see also ancillary document review checklists for these documents):



- **ETA 094.04.193, Out-of-state activities related to performance of local installation contract**, explains that charges for engineering and purchasing services performed outside his state may not be apportioned when such charges are part of a contract for the in-state installation and testing of equipment within this state.
- **ETA 281.04.193, Interstate mail delivery by vendor of goods sold**, explains that when out-of-state delivery occurs via US mail, the sales slip identifying the out-of-state delivery requirement and the insurance receipt provide sufficient documentation. WAC 458-20-193 currently discusses documentation requirements when delivery occurs via common carrier or the seller's own transportation equipment, yet is silent as to delivery via US Mail.
- **ETA 561.04.193, Receipt of goods through an agent**. This ETA clarifies the rule's current language concerning when a carrier has the express written authority to accept the goods for the buyer at an out-of-state location. The ETA explains that the carrier must not only have the authority, but also must actually do so and provide written documentation of that fact to the seller.

The following documents should be retained at this time (see also ancillary document review checklists for these documents):

- **ETA 145.04.193, Retention of title to secure payment on interstate sales of goods**. This ETA addresses issues that are more related to when a sale occurs. The ETA should remain as is. At such time as WAC 458-20-103 (Time and place of sale) is revised, the rule drafter should consider incorporating the ETA.
- **ETA 316.08.193, Sales to nonresidents**. This document provides detailed tax-reporting instructions regarding retail sales tax exemption provided by RCW 82.08.0273. While this exemption is identified in Rule 193, this detailed information is best retained in an interpretive statement. The Department should consider readopting this information into the new ETA series, the numbers of which have a prefix of "2".

The following documents can simply be repealed (see also ancillary document review checklists for these documents):

- **ETA 162.04.193, Cartage, storage and handling of goods moving in interstate commerce**. This ETA should be cancelled as WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate and foreign commerce) and WAC 458-20-182 (Warehouse businesses) sufficiently address the issues.
- **ETA 175.04.193, Local services connected with interstate transactions**. This ETA should be cancelled as WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate and foreign commerce) sufficiently addresses the issues.
- **ETA 506.04.193B, Nexus presumption**. The ETA explains the Department's longstanding presumption that nexus for one sale is nexus for all subsequent sales unless the seller can prove the sales are unrelated to the activity that established nexus (disassociation). The ETA also explains that the burden of proving disassociation rests solely with the seller. ETA 506 should be cancelled as WAC



458-20-193 and numerous published determinations sufficiently address the nexus presumption.

- **ETA 507.04.193B, Stimulating wholesale sales by promoting retail sales.** Nexus established when a wholesaler conducted in-state activities to promote retail sales. Although WAC 458-20-193 does not address the specific situation, subsection (7)(c)(v) is broadly written so as to encompass the situation. For this reason, ETA 507 should be cancelled.
- **ETA 508.04.193B, Nexus: Employees of seller's agent.** Nexus established when salesmen of wholly-owned subsidiary solicited sales for parent corporation. ETA 508 should be cancelled as WAC 458-20-193(7)(c)(iii) sufficiently addresses issue of when nexus is established.
- **ETA 509.04.193B, Business and occupation tax on local services of non-selling resident managers.** Nexus established by a non-selling resident district manager performing public relations and marketing services for franchisees. ETA 509 should be cancelled as WAC 458-20-(7)(c)(v) sufficiently addresses the issue of when nexus occurs.
- **ETA 560.04.193, Delivery – goods originate outside Washington.** The ETA explains the Department's position with respect to sales occurring before January 1, 1992. For sales occurring January 1, 1992, and after, the ETA directs the reader to WAC 458-20-193, effective January 1, 1992. The ETA should be cancelled as sales occurring before January 1, 1992, are outside the statutory nonclaim period provided by RCW 82.32.050(3)/82.32.100(3).
- **Audit Directive 8193A.1, Merchandise pickup out of state, further explains application of ETA 527.04-08.193A.** This audit directive clarifies an ETA that was cancelled June 1, 1999. Consequently, the directive should be cancelled.
- **Audit Directive 8193A.2, Interstate sales and delivery provides further instructive as to application of RPM No. 89-1.** RPM 89-1 provided interim instructions as to the taxability of sales made by out-of-state persons to persons in this state when certain shipping conditions exist. The RPM was cancelled with the January 1, 1991, adoption of WAC 458-20-193. The application of 8193A.2 is outside the statutory nonclaim period provided by RCW 82.32.050(3)/82.32.100(3). In addition, WAC 458-20-193, effective January 1, 1992 controls the taxability of inbound sales. For both these reasons, the audit directive should be cancelled.
- **Audit Directive 8193A.3, Manufacturing prior to June 1, 1987, answers the question as to whether in light of the National Can decision, the manufacturing B&O tax could be assessed for periods before June 1, 1987.** WAC 458-20-19301 provides sufficient direction as to the tax treatment of multiple activities. The audit directive should be cancelled.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to



		achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
X		Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

The rule as written presents information in a clear and concise manner. It can be made more effective, however, by eliminating the discussion about rentals or leases of tangible personal property, subsection (5), in favor of a reference to WAC 458-20-211 (Leases or rentals of tangible personal property, bailment). When Rule 211 is revised, it should incorporate the discussion currently provided by WAC 458-20-193.

Although the citations currently included in WAC 458-20-193 are correct, the rule can be made more effective to providing additional references to other rules. Subsection (5)(b) should reference WAC 458-20-143 (Publishers of newspapers, magazines, periodicals), WAC 458-20-144 (Printing industry), and WAC 458-20-173 (Installing, cleaning, repairing, or otherwise altering or improving personal property of consumers). Subsection (5)(c) should incorporate references to WAC 458-20-170 (Constructing and repairing of new or existing buildings or other structures upon real property), WAC 458-20-17001, Government contracting-Construction, installation, or improvements to government real property),

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

RCW 82.32.300, Department of Revenue to Administer, provides the Department with the authority to “make and publish rules and regulations” as necessary for the reporting of taxes imposed under the various chapters of Title 82 RCW.



6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

As an interpretive rule, WAC 458-20-193 does not impose administrative burdens that are not required by law.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

RCW 82.04.220	Business and occupation tax imposed.
RCW 82.04.250	Tax on retailers.
RCW 82.04.270	Tax on wholesalers, distributors.
RCW 82.04.4286	Deductions Nontaxable business.
RCW 82.08.010	Definitions.
RCW82.08.020	Retail sales tax imposed.
RCW 82.08.0254	Deductions Nontaxable sales.
RCW 82.08.0269	
	of the United States which are not contiguous to any other state.
RCW 82.08.0273	
RCW 82.08.050	lties.
RCW 82.08.130	
RCW 82.12.010	Definitions
RCW 82.12.020	Use tax imposed
RCW 82.12.0252	
	previous bailee from same bailor before June 9, 1961.
RCW 82.12.0255	
RCW 82.12.040	

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

ETA 094.04.193	Out-of-state activities related to performance of local installation contract.
ETA 145.04.193	Retention of title to secure payment on interstate sales of goods.
ETA 162.04.193	Cartage, storage and handling of goods moving in interstate commerce.
ETA 175.04.193	Local services connected with interstate transactions.
ETA 281.04.193	Interstate mail delivery by vendor of goods sold.
ETA 316.08.193	Sales to nonresidents.
ETA 506.04.193B	Nexus Presumption
ETA 507.04.193B	Stimulating wholesale sales by promoting retail sales.



ETA 508.04.193B	Nexus: Employees of seller's agent.
ETA 509.04.193B	Business and occupation tax on local services of nonselling resident managers.
ETA 560.04.193	Delivery – goods originate outside Washington.
ETA 561.04.193	Receipt of goods through an agent.

Audit Directive 8193A.1 ETB 527 – Merchandise pickup out of state.

Audit Directive 8193A.2 Interstate sales and delivery.

Audit Directive 8193A.3 Manufacturing prior to June 1, 1987

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

- **BTA Docket No, 50356, BTA upheld assessment of B&O tax and requirement to collect sales tax on New York manufacturer of machinery to cut glass and heavy metal. New York manufacturer established nexus by installing equipment within this state and then training the customer on machinery's operation. Furthermore, BTA decision held that delivery occurred when replacement parts were received by the customer in this state and that the New York manufacturer could not disassociate sales of replacement parts.**
- **BTA Docket No. 93-38, BTA upheld Department's assessment of wholesaling B&O tax on sales made in Washington by an out-of-state manufacturer where the seller's only contact with Washington consisted of solicitation of sales by a non-resident independent contractor. The BTA concluded that the in-state solicitation activities of the nonresident representative were sufficient to establish nexus.**
- **BTA Docket No. 49874, BTA upheld Department's assessment of use tax on out-of-state seller of furniture and appliances whose sole contact with Washington was the delivery of goods using its own transportation equipment. The seller had registered with the Department for the purpose of reporting and paying retail sales tax for sales to schools. Such registration and collection of tax was a contractual requirement by the schools. However, the seller collected tax for no other sales. BTA held that delivery using own transportation equipment was sufficient for the purposes of requiring the collection of use tax. It also held that the voluntary registration and reporting of tax on some sales was sufficient to require the collection of use tax on other sales where delivery occurred in this state because the seller had availed itself of the market in this state.**

Administrative Decisions (e.g., WTDs) **Review of determinations includes only those published after January 1, 1992, adoption of WAC 458-20-193. As currently written, Rule 193 sufficiently explains the issues addressed by these determinations unless noted otherwise:**

- **19 WTD 440—Taxpayer who trained client employees to train other client employees established nexus.**



- **18 WTD 377**—Sale occurred in this state notwithstanding the buyer’s inspection for quality at the seller’s out-of-state location because the contract provided that final inspection and acceptance/rejection of the goods would occur at the buyer’s Washington location.
- **18 WTD 316**—Nonresident corporations must first acquire a corporate nonresident permit before purchasing tangible personal property for use outside this state without payment of retail sales tax. This information is sufficiently addressed in ETA 316.08.193
- **18 WTD 85**—Nexus established by nonexclusive, nonresident sales representatives soliciting sales on behalf of an out-of-state furniture manufacturer. Five years must pass before a seller can disassociate a sale where there has been no customer contact.
- **18 WTD 26**—A seller who delivered goods to the buyer’s Washington office which acted as its own freight forwarder unable to claim B&O tax exemption for interstate sales even though the buyer transported the goods to a noncontiguous state. For the sales tax exemption, the buyer may transport the goods. To qualify as an interstate sale for B&O tax purposes, the seller must deliver the goods to a third party for-hire carrier, freight forwarder, or freight consolidator.
- **18 WTD 264**—The wholesaling B&O tax applies to an out-of-state manufacturer making sales to a Washington manufacturer notwithstanding that the goods are shipped FOB when the goods are subject to final inspection and acceptance upon delivery in Washington. The fact that the contract allowed for the manufacturer to have a resident employee inspect and accept or reject the goods at the out-of-state plant was of no consequence especially as the manufacturer did not exercise that right. Issue primarily that of where a sale occurs as opposed to whether the taxpayer had nexus.
- **18 WTD 211**—Nexus established by an out-of-state manufacturer of computer hardware and software whose employees made one or two visits a year in Washington for the purposes of cultivating goodwill, obtaining input on taxpayer products, addressing user concerns, resolving problems with accounts, and dispensing information.
- **18 WTD 175**—Nexus established by an out-of-state seller whose nonresident salesperson visited a couple of times a year to deliver catalogs and provide technical advice. The fact that delivery occurs FOB via common carrier does not alter that a sale occurs when the buyer receives the goods in this state.
- **17 WTD 107**—Presence of a sale manager in this state sufficient to establish nexus. To disassociate sales, five years must elapse from the time the activity establishing nexus occurred.
- **16 WTD 201**—Wholesaler visiting dealers a couple times a year to attend in-state trade shows in support of its dealers or to provide training establishes nexus. Such visits provide significant services in relation to establishing or maintaining sales to dealers. Includes discussion of disassociation and taxpayer’s burden to maintain records sufficient to prove disassociation.
- **15 WTD 100**—Reconsideration of previous determination involving nexus. Issue in reconsideration related to disassociation.
- **15 WTD 096**—Confirms that burden of proof for disassociation rests with taxpayer.



- **14 WTD 085**—Nexus established by an out-of-state oil trader without office or employees in state. Oil trader made paper transactions involving the purchase, sale, and exchange of oil located within state. Contracted with an in-state inspector to certify quantity and quality of oil.
- **14 WTD 041**—Nexus established by an out-of-state vendor who employed a resident sales representative whose purpose was to maintain the existing sales base through regular visits and around-the-clock availability and provide technical advice. Disassociation of sales to customer that representative was contracted with to specifically service disallowed.
- **14 WTD 035**—The presence of the taxpayer's resident salesperson sufficient to establish nexus. Taxpayer's reliance on State Taxation of Income from Interstate Commerce Act of 1959, 15 USC § 381 *et seq.*, is misplaced.
- **14 WTD 007**—Nexus established by an out-of-state seller who contracted to construct and deliver a vessel to the buyer in this state. The taxpayer contracted with a third party for actual construction and provided certain required oil skimming equipment. In addition, taxpayer's sales representatives traveled to Washington to solicit sales and provide technical advice.
- **13 WTD 334**—An out-of-state seller without an office or sales representative established nexus due to the presence of a resident repairperson. To the extent that sales can be disassociated from the activities of the repairperson, the seller required to collect use tax.
- **13 WTD 297**—A single corporation with locations in the Puget Sound area and Oregon found to have met the burden of proof necessary to disassociate sales to Washington customer's by Oregon locations. However, requirement to collect retail sales/use tax remains.
- **13 WTD 027**—A foreign manufacturer who manufactures and sells airplane galleys to foreign airlines established nexus when it delivered the galleys to a Washington affiliate for final assembly and then occasional repair after installation by the aircraft manufacturer.
- **13 WTD 018**—Similar issue as 13 WTD 027.
- **13 WTD 001**—Disassociation denied to a taxpayer who had established nexus via an in-state manufacturing plant and sales office for sales made by independent agents of other divisions.
- **12 WTD 297**—Nexus established by out-of-state commodities trading corporation when the commodities are warehoused in this state.
- **12 WTD 157**—Deduction for interstate sales does not apply to charges for parts installed during the repair of tangible personal property shipped into this state by an out-of-state person.
- **11 WTD 383**—Nexus established by an out-of-state seller of wristwatches and timepieces via resident employees who solicited orders. Disassociation allowed to the extent that the taxpayer could provide sufficient documentation that certain sales were unrelated to the activities that established nexus.
- **11 WTD 333**—Nexus established if a mail order company places its catalogs in the retail stores of a related entity. Determination found that the related entity would be performing significant services as an agent or representative.



- **11 WTD 239—Nexus established when an employee infrequently or otherwise visits Washington to show new colors and styles and explain policies. Disassociation discussed.**
- **11 WTD 231—Manufacturer and seller of bathroom fixtures and accessories established nexus via independent contractors who call on customers and potential customers to solicit sales.**

Attorney General's Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

10. Review Recommendation:

☒ Amend

☐ Repeal

☐ Leave as is

☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)



Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

WAC 458-20-193 should be revised to incorporate information now provided in ETAs 094, 281, and 561. The current information regarding the issues of dissassociation and receipt/delivery should also be reevaluated to confirm the information is consistent with current case law.

When revising WAC 458-20-193, the rule drafter should incorporate the additional citations to other rules noted above in Section 4. It may also be appropriate to incorporate information now provided in WAC 458-20-103 (Time and place of sale). (See also the rule review for WAC 458-20-103.)

11. Manager action: Date: _____

_____ Reviewed recommendation _____ Accepted recommendation

_____ Returned for further action

Comments: